

# Supreme Court of the United States

SUNCOOK VALLEY RAILROAD

vs.

BOSTON & MAINE RAILROAD

*Petitioner*

No. 358

BOSTON & MAINE RAILROAD

vs.

SUNCOOK VALLEY RAILROAD

AND

SUNCOOK VALLEY RAILROAD

vs.

BOSTON & MAINE RAILROAD

on a counterclaim

*In the Matter of*

## PETITION FOR REHEARING ON DENIAL OF PETITION FOR A WRIT OF CERTIORARI TO THE NEW HAMPSHIRE SUPREME COURT

*To the Honorable The Supreme Court of the United States:*

Your petitioner, Suncook Valley Railroad, respectfully submits this petition for a rehearing on the denial by this Court of the petition for a writ of certiorari to review the decree of the New Hampshire Supreme Court's dismissing the counterclaim of Suncook Valley Railroad, the counterclaimant and defendant in the above-entitled cases.

The denial by this court of the petitioner's application for a writ of certiorari without having stated the grounds therefor leaves unanswered the Federal questions whether:

1. The I. C. C., having approved a lease between two interstate railroads, must not also approve any

subsequent change in the territory each carrier is to serve as a prerequisite to the change.

2. The rentals to be paid under a lease approved by the I. C. C. between two interstate railroads validly may be altered by agreement between the contracting parties without application to the I. C. C.

3. Two railroads by mutual agreement may alter the terms of a lease of a line of railroad which lease was approved by the I. C. C. without first applying for I. C. C. formal approval when by such modification there results a substantial revenue loss to one railroad and corresponding gain to the other railroad.

4. The financial life or death of a railroad may be resolved by agreement between it and another railroad by changing the terms of an I. C. C. approved lease between the railroads without getting or applying for I. C. C. approval for the modification.

5. A state court that ignores the question of the authority of the I. C. C. may thereby defeat the raising of the Federal question in the Supreme Court of the United States.

6. A state court that ignores the authority of the I. C. C. and in effect repeals the power imposed by Congress on the I. C. C. precludes judicial review by the Supreme Court of the United States.

7. The public served by two regulated interstate railroads is subject to the whim of the management of the carriers as to which carrier will serve a particular territory when theretofore for the public good the I. C. C. had designated what area each railroad should serve.

The State Courts could have given to the Suncook Valley Railroad the relief that it sought by recognizing the authority and jurisdiction of the I. C. C.; they could not, however, encroach and impinge upon the functions and duties of the Commission simply by denying their pertinance in this case.

Therefore your petitioner prays that a rehearing be granted on its said petition for a writ of certiorari, and for such further relief as may seem proper to this Court.

Respectfully submitted,

SUNCOOK VALLEY RAILROAD,

*By its Attorneys,*

*Mayland H. Morse,*

*George R. Grant, Jr.*

STATE OF NEW HAMPSHIRE  
MERRIMACK, SS.

We Mayland H. Morse and George R. Grant, Jr., hereby certify that the foregoing petition for rehearing is presented in good faith and not for delay.

MAYLAND H. MORSE,  
GEORGE R. GRANT, JR.

Subscribed and sworn to before me the undersigned authority by Mayland H. Morse and George R. Grant, Jr., both to me known this fourth day of November 1946.

FREDERICK S. HALL,  
*Notary Public.*